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wards joined in a deed thereof, only on his agreement to build her another house of equal value, and at the time thereof he was not in debt, his subsequent conveyance of a lot to her, and building thereon of a house of equal value, was on a valuable consideration, and not in fraud of his then existing creditors.

[Ed. Note.—For other cases, see *Fraudulent Conveyances*, Cent. Dig. §§ 243-288; Dec. Dig. § 95.\* 6 Va.-W. Va. Enc. Dig. 611.]

Appeal from Circuit Court, Wise County.

Suit by Ashworth and others against Brown and others. From an adverse decree, complainants appeal. Affirmed.

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SUTHERLAND *v.* EMSWILLER.

Nov. 17, 1910.

[69 S. E. 363.]

**Frauds, Statute of (§ 56\*)—Parol Boundary Agreement—Transfer of Title.**—Where the deeds to plaintiff and defendant from their common grantor established the dividing line as the middle line of a ten-foot alley between the two lots conveyed, the fact that prior to the deed to plaintiff the common grantor and defendant agreed by parol that the division line should be nearer plaintiff's side of the alley than as called for by the deeds, and built a fence there, could not prevent plaintiff from recovering possession up to the line called for by the deeds; title to land not being transferable by parol.

[Ed. Note.—For other cases, see *Frauds, Statute of*, Cent. Dig. §§ 83-89, 136-138; Dec. Dig. § 56.\* 2 Va.-W. Va. Enc. Dig. 594.]

Error to Circuit Court, Shenandoah County.

Action of ejectment by Benjamin Sutherland against Fanny M. Emswiller. Judgment for defendant, and plaintiff brings error. Reversed.

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SANDS & OLIVER *v.* QUIGG.

Nov. 17, 1910.

[69 S. E. 440.]

**1. Set-Off and Counterclaim (§ 28\*)—Right of Set-Off—Contract Action.**—In an action by a subcontractor to recover a balance due under his contract, the principal contractor could set off any damages for breach of the subcontractor's contract with them.

[Ed. Note.—For other cases, see *Set-Off and Counterclaim*, Cent. Dig. §§ 47, 48; Dec. Dig. § 28.\* See all 12 Va.-W. Va. Enc. Dig. 275.]

**2. Contracts (§ 303\*)—Performance—Excuses for Nonperformance.**—That other subcontractors, as well as the principal contractor,

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

were prevented from completing the grading and construction of a railroad within the time required by their respective contracts, would not prevent the principal contractor from recovering damages of a particular subcontractor for breach of his contract to complete his part of the work within the required time, caused by a fire damaging his equipment; the express words of the contract making time of the essence.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 1409-1443; Dec. Dig. § 303.\* See also 3 Va.-W. Va. Enc. Dig. 421, 434.]

**Appeal from Circuit Court, Roanoke County.**

Action by William H. Quigg against Sands & Oliver, in which defendants set up a counterclaim. From a judgment for plaintiff in part, without allowing defendants' counterclaim, defendants appeal. Reversed and rendered.

*Wilson & Manson*, for appellants.

*Hall, Woods & Jackson*, for appellee.

**Note.**

The court evidently was thinking of recoupment and not true set-off, as the distinguishing feature of set-off is that both demands must be in the nature of debts, and unliquidated damages cannot be set off. The provisions of § 3299, providing for a special plea of equitable set-off, did not affect the status of common-law, recoupment. See *Columbia Accident Ass'n v. Rockey*, 93 Va. 678, 25 S. E. 1009.

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**COMMONWEALTH v. GLEASON et al.**

Nov. 17, 1910.

[69 S. E. 448.]

**1. Officers (§ 66\*)—Qualifications—Removal—Grounds—Accepting Pass.**—Section 161 of the Constitution of Virginia of 1902 (Code 1904, p. cclix) prohibits transportation companies from giving any frank, free, pass, free transportation, etc., to any state, county, district, or municipal officer, etc.; any officer accepting the same forfeiting his office thereby. A councilman of the city of C. was also an employee of a railway company, and from them received passes, which were given in consideration of his services and as a part payment for employment. Held, that his acceptance of such passes was not prohibited by the Constitution.

[Ed. Note.—For other cases, see Officers, Dec. Dig. § 66.\* See also, 11 Va.-W. Va. Enc. Dig. 493, et seq.]

**2. Officers (§ 66\*)—Removal—Grounds—"Free Pass."**—A "free pass," within Const. 1902, § 161 (Code 1904, p. cclix), prohibiting any

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.